IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2927 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER - Appellant(s)
Versus
SOMAJI RAIJIJI & 3 - Defendant(s)

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Appearance :
Mr.Jaswant K.Shah,learned Assistant Government Pleader for Appellant(s) : 1,
MR AJ PATEL for Defendant(s) : 1, 3,
None for Defendant(s) : 2, 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 4,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 25/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr. A.J.Patel, learned counsel, waives service of notice on behalf of the claimants. Mr.Jaswant K.Shah, learned Assistant Government Pleader, states at the Bar that the interest of the appellant and that of the respondent No.2 is identical and not in conflict at all. In view of the statement made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of this appeal upon respondent No.2. Having regard to the facts of the case, the appeal is taken up for final disposal today.

2. By filing the instant appeal under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure,

1908, what is challenged is the legality of judgment and award dated December 11,2003, rendered by the learned Second Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Navrangpura, in Land Acquisition Case No.1361 of 1996, by which the claimants have been awarded additional amount of compensation at the rate of Rs.54.90 Ps. per sq.mt. for their acquired land, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.5.40 Ps. per sq.mt. for irrigated land and Rs.3.60 Ps. per sq.mt. for non-irrigated land by his award dated March 2,1991.

3. The Executive Engineer, Narmada Yojana, Division No.13, Gandhinagar proposed to the State Government to acquire the land bearing Survey No.63 situated at village Valad, Taluka Gandhinagar, District Gandhinagar and belonging to the claimants for the public purpose of construction of a canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued

which was published in the Official Gazette on May 16,1989. The owners of the lands were served with notices. After considering their objections, a report was submitted by the Special Land Acquisition Officer under Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the land of the claimants mentioned in the notification published under Section 4(1) of the Act was needed for the public purpose of construction of a canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on January 23,1990. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated March 2, 1991 offered compensation to the claimants at the rate of Rs.5.40 Ps. per sq.mt. for irrigated land and Rs.3.60 Ps. per sq.mt. for non-irrigated land. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally

inadequate. Therefore, they submitted application under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their case to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the reference was made to the District Court, Ahmedabad (R) at Navrangpura, where it was registered as Land Acquisition Case No.1361 of 1996. It may be mentioned that alongwith the land of claimants in this case, the lands bearing Survey/Block No.850 and 851 were also acquired and, therefore, at the instance of owners of those lands, reference was made to the District Court, Ahmedabad (R) at Navrangpura, which was registered as Land Acquisition Case No.1360 of 1996.

4. On behalf of the claimants, witness Gandabhai alias Bhikhabhai Bhulabhai was examined at Exh.23. After giving particulars of the land acquired, the witness mentioned in his testimony that the land acquired was even and irrigated. In order to substantiate this claim, the witness produced VII-XII extracts relating to the land at Exh.18 to Exh.20. The witness further claimed before the Court that the claimants were able to raise three crops in a year

and that after deducting the cost of cultivation they were able to earn net income of Rs.60,000/- per Vigha per year. Further the witness mentioned that earlier also from his village Valad lands were acquired for the public purpose of construction of a Canal under Narmada Project and Reference Court had awarded compensation to the claimants at the rate of Rs.70/- per sq.mt. The witness produced previous award of the Reference Court relating to the lands of his own village at Exh.21. The witness further informed the Court that the said award of the Reference Court was subjected to challenge before the High Court and the High Court had reduced the amount of compensation payable to the claimants to Rs.53/- per sq.mt. A copy of the judgment rendered by the High Court was produced by the witness at Exh.22. It was asserted by the said witness that the lands, which were previously acquired from his village, were similar in all respects to the land acquired in the instant case. It was also stated by this witness, that quite near the land acquired, several industrial units had come up and, therefore, the claimants were entitled to enhanced compensation.

This witness was cross-examined by the learned counsel for the acquiring authorities but nothing

substantial could be elicited nor the assertion made by the witness that earlier lands from his own village were acquired for public purpose and they were similar in all respects to the land acquired in the instant case, could be demonstrated to be untrue.

It may be mentioned that though ample opportunity was given to the acquiring authorities, no witness was examined on their behalf

5. On the basis of the evidence adduced by the claimants, the Reference Court was of the opinion that previous award of the Reference Court, as modified by the High Court, relating to the lands of this very village was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the land acquired in the instant case. The Reference Court noticed that in the previous case Notification under Section 4(1) of the Act was published in the Official Gazette on December 3, 1985, which was later on modified by another notification dated January 29, 1987, whereas in the instant case it was published in the Official Gazette on May 16,1989 and, therefore, in view of gap of time in publication of notifications, the

claimants were entitled to the benefit of rise in price of land at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded additional amount of compensation at the rate of Rs.54.90 Ps. per sq.mt. to the claimants by the impugned award, giving rise to the above numbered appeal.

6. This Court has heard Mr.Jaswant K.Shah, learned Assistant Government Pleader and Mr.A.J.Patel, learned counsel for the claimant/claimants at length and in great detail. This court has also considered the paper book supplied by the learned counsel for the claimants, which includes the oral as well as documentary evidence adduced by the parties before the Reference Court.

7. It is true that the claimants could not make good their assertion that they were able to earn net income of Rs.60,000/- per Vigha per year from sale of agricultural produces. However, the said fact pales into insignificance inasmuch as enhanced compensation was never claimed on the basis of yield. The record does not indicate that enhanced compensation was claimed on the basis of comparable sale instances.

What was relied upon by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court relating to the lands of this very village as modified by the High Court. Exh.21 indicates that the lands of village Valad, Taluka Gandhinagar, District Gandhinagar were acquired for public purpose of construction of a canal under Narmada Project pursuant to publication of notification issued under section 4(1) of the Act in the Official Gazette on December 3,1985, which was subsequently modified by another Notification dated January 29, 1987. In those cases, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.4.50 Ps. per sq.mt. for irrigated land and Rs.3/- per sq.mt. for non-irrigated land. Feeling aggrieved, the claimants had sought reference. Accordingly references were made to the District Court, Ahmedabad (R) at Mirzapur where they were registered as Land Acquisition Case No.626 of 1991, 627 of 1991 etc. In the said case, on behalf of the claimants witness Trikambhai M.Patel was examined at Exh.56, whereas on behalf of the acquiring authorities no witness was examined but certain documentary evidence was produced for consideration of the Reference Court. On appreciation

of evidence adduced by the parties, the Reference Court by common judgment and award dated November 4, 1996 held that the claimants were entitled to compensation at the rate of Rs.70/- per sq.mt. for their acquired lands. Exh.22, which is the judgment of the High Court delivered in First Appeal Nos.2481 to 2507 of 1997 indicates that the above mentioned common judgment and award of the Reference Court was challenged before the High Court and the appeals filed by the Special Land Acquisition Officer were partly allowed by judgment dated April 3,1998 by holding that the claimants were entitled to compensation at the rate rate of Rs.53/- per sq.mt. It is well settled principle of law that previous award of the Reference Court relating to a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from the same village. The relevancy of the previous award of the Reference Court relating to the lands of this very village stands well established by reliable testimony of the witness examined on behalf of the claimants. Therefore, this court is of the opinion that the Reference Court was justified in placing reliance on

previous award of the Reference Court relating to the lands of this very village for the purpose of determining market value of the lands acquired in the instant case. As observed earlier, there is gap of time between the issuance of two notifications under Seton 4(1) of the Act, which were published in the Official Gazette. The prices of the lands never remain static and go on increasing day by day. Therefore, the Reference Court was justified in granting benefit of rise in price of the land to the claimants at the rate of 10% per annum. The calculation of the amount of compensation payable to the claimants on the basis of previous award of the Reference Court relating to the lands of this very village is not in dispute before this court in the instant appeal. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which well settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced before it. Thus, the appeal, which lacks merit, deserves dismissal.

8. For the foregoing reasons, the appeal fails and is dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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